

WILTSHIRE COUNCIL

SOUTHERN AREA PLANNING COMMITTEE

30 APRIL 2015

COMMONS ACT 2006 – SECTION 15(1) AND (3)
APPLICATION TO REGISTER LAND AS A TOWN OR VILLAGE GREEN – THE
COMMON / BROWNS COPSE FIELD / BLUEBELL WOOD / VILLAGE HALL FIELD /
THE FIELD, WINTERSLOW

Purpose of Report

1. To:
 - (i) Consider a report and recommendation, dated 10 March 2015, made by Mr Stephen Morgan of Landmark Chambers, appointed by Wiltshire Council as an independent Inspector to preside over a non-statutory public inquiry, held in November/December 2014, to consider an application made under Sections 15(1) and (3) of the Commons Act 2006, to register land known as The Common / Browns Copse Field / Bluebell Wood / Village Hall Field / The Field, in the parish of Winterslow, as a town or village green.
 - (ii) Recommend that Wiltshire Council accepts the Inspector's recommendation.

Relevance to Council's Business Plan

2. Working with the local community to provide an accurate register of town and village greens, making Wiltshire an even better place to live, work and visit.

Background

3. Wiltshire Council received an application, dated 3 February 2012, made under Section 15(1) of the Commons Act 2006, to register land off Middleton Road, Winterslow known as The Common / Browns Copse Field / Bluebell Wood Field / Village Hall Field / The Field, as a town or village green. The application was also made under Section 15(3) of the Act, i.e. where use of the land for recreational purposes has ceased and the application is made within two years of the cessation of use. The application was made by Mr T Crossland on behalf of the group "Winterslow Opposed to Over Development" (WOOD).
4. Part 7 of the application form requires the applicant to provide a summary of the case for registration. The applicant included the following comments:

"Indulgence by a significant number of inhabitants of Winterslow as of right in lawful sports and pastimes for a period of at least 20 years and 5 months under Section 15(3) of the Commons Act 2006, as witnessed by the 63 enclosed signed statements showing use for activities including dog walking, picking blackberries, kite flying and bicycle riding by a total of 63 people over a period extending from December 1990 to April 2011."

5. The application was accepted as a complete and correct application on 29 August 2012. The application was accompanied by 63 completed witness evidence questionnaires. Following the service of formal notice of the application, posting of notice of the application on site and in one local newspaper and placing the application on public deposit, objections and representations were received, as follows:

Objections:

- 1) Petition from residents of Highfield Crescent - undated
- 2) Letter with enclosures from Mrs P Sheppard - 14/01/13 (joint landowner)
- 3) Letter with enclosures from Mr R Sheppard - 27/04/13 (joint landowner)
- 4) Letter with enclosures from Mr R Sheppard – 30/04/13
- 5) “Objectors Response” from Mr and Mrs Sheppard – 27/02/13

Representations:

- 1) Letter from L E Rogers – 16/04/13
- 2) E-mail from Councillor Christopher Devine – 13/05/13
- 3) E-mail from Barbara Coombs, Principal Legal Executive, Wiltshire Council – 08/08/14

6. The claimed land is located to the south-west of Middleton Road, Winterslow (please see location plan at **Appendix A**) and occupies an area of approximately 18 acres, laid to grass and woodland with open access from public rights of way located on the north and south perimeters of the site (please see application plan attached at **Appendix B**). The majority of the land is owned by Mr Richard and Mrs Patricia Sheppard of Weston Hill Farm, Winterslow; a small part of the application land in the north-west corner of Brown’s Copse is owned by Wiltshire Council; Scottish and Southern Electric PLC own an electrical sub-station located at the south-east of the application land and two small parts of the land within the copse are unregistered (please see land ownership plan at **Appendix C**). The Council as landowner did not formally object to the registration of the land in their ownership.
7. Wiltshire Council considered the evidence and the objections received, within a report to the Associate Director of Waste and Environment, dated 31 January 2014 (please see report attached at **Appendix D**). Officers recommended that given the substantial dispute of fact in this case it would be advisable to hold a non-statutory public inquiry into the evidence, appointing an independent Inspector to preside over the inquiry and to provide a report and recommendation to the determining authority.
8. This recommendation was accepted and Wiltshire Council appointed Mr Stephen Morgan of Landmark Chambers (London), as Inspector to preside over a non-statutory public inquiry and having considered documentary and oral evidence to write a report containing a recommendation to Wiltshire Council as the determining authority. The inquiry was held in Winterslow on Tuesday 25 to Friday 28 November 2014 (inclusive), re-convening on Tuesday 16 December 2014 for closing submissions and an accompanied site visit at the close of the inquiry, on that day.

Main Considerations for the Council

9. Following consideration of the available documents and the hearing of evidence given in chief; in cross-examination and in re-examination at the public inquiry, the Inspector presented a report to Wiltshire Council, dated 10 March 2015 (please see report attached at **Appendix E**), in which he made the following recommendation:

“For the reasons set out in Section 5 of this Report, I recommend to the Registration Authority:

The Application by Winterslow Opposed to Over Development (WOOD) under section 15(3) of the Commons Act 2006 be approved but only to the extent that Brown’s Copse is registered as a town or village green in its entirety, other than the north-west corner of the Copse that is owned by Wiltshire Council.”

10. There is no obligation placed upon the determining authority to follow the Inspector’s recommendation (although if the Committee decide not to follow the Inspector’s recommendation they must have good reasons for not following the recommendation) and Members of the Committee are requested to consider the Inspector’s report and the available evidence in order to determine whether or not the application land should be registered as a town or village green.
11. Under the Council’s constitution one of the functions of the Area Planning Committee is, where an objection has been received and has not been resolved, to consider matters of local importance within the area such as the registration of town and village greens. In this case, the owners of the application land objected to the registration of the application land as a village green and have to date not withdrawn their objection following the public inquiry which took place in November/December 2014.
12. Under the Commons Registration Act 1965, Wiltshire Council is now charged with maintaining the register of town and village greens and determining applications to register new greens. The application to register land off Middleton Road, Winterslow as a town or village green, has been made under Sections 15(1) and (3) of the Commons Act 2006, which amended the criteria for the registration of greens. Section 15 of the Commons Act is set out in full at part 7 of the Decision Report attached at **Appendix D**.
13. Sections 15(1) and (3) of the Act, state:

“15 Registration of greens

 - (1) *Any person may apply to the commons registration authority to register land to which this Part applies as a town or village green in a case where subsection (2), (3) or (4) applies.*
 - (3) *This subsection applies where-*
 - (a) *A significant number of inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;*
 - (b) *they ceased to do so before the time of the application but after the commencement of this section; and*
 - (c) *the application is made within the period of two years beginning with the cessation referred to in paragraph (b).”*

Safeguarding Considerations

14. There are no safeguarding considerations as those relating to safeguarding are not permitted within Section 15 of the Commons Act 2006. Any determination must be based on the relevant evidence before the Registration Authority.

Public Health Implications

15. There are no public health implications as considerations relating to public health are not permitted within Section 15 of the Commons Act 2006. Any determination must be based on the relevant evidence before the Registration Authority.

Environmental Impact of the Proposal

16. Considerations relating to the environmental impact of the proposal are not permitted within Section 15 of the Commons Act 2006. Any determination must be based on the relevant evidence before the Registration Authority.

Equalities Impact of the Proposal

17. Considerations relating to the equalities impact of registering land as a town or village green, are not permitted within Section 15 of the Commons Act 2006. Any determination must be based on the relevant evidence before the Registration Authority.

Risk Assessment

18. The holding of a non-statutory public inquiry and the production of the subsequent report and recommendation to Wiltshire Council from an Independent Inspector, have reduced the risk to the Council of a potential legal challenge as the evidence has been heard, tested and considered.

Financial Implications

19. Presently there is no mechanism by which a Registration Authority may charge the applicant for processing an application to register land as a town or village green and all costs are borne by the Council.
20. Where the Council makes a decision to register land as a town or village green it must give a reason for its determination as this decision is potentially open to legal challenge. The legal costs of a successful legal challenge against the Council could be in the region of £40,000 - £100,000.
21. There is currently no duty for Registration Authorities to maintain land registered as a town or village green.

Legal Implications

22. If the land is successfully registered as a town or village green, the landowner could potentially challenge the Registration Authority's decision by an appeal to the High Court under Section 14(1)(b) of the Commons Registration Act 1965 ('1965 Act'), which allows the High Court to amend the register only if it can be shown that the registration ought not to have been made and that it is just to rectify the register. The overall effect is that the registration of the land is deemed to have been made under Section 13 of the 1965 Act and there is a preserved right under Section 14 to apply to the court to rectify the registration of the town or village green without limit of time. The application which could be made many years after the decision potentially enables the Court to hold a re-hearing of the application and consider the facts and law and could lead to de-registration of the land.
23. Where the Registration Authority decides not to register the land as a town or village green, there is no right of appeal for the applicant, although the decision of the Council may be challenged through judicial review, for which the permission of the court is required and the application must be made within three months of the date of

the decision. A landowner could also use judicial review proceedings to challenge the Council's decision to register their land as a town or village green.

24. There is currently no statutory or non-statutory guidance available to authorities regarding when it would be considered to be appropriate for a Registration Authority to hold a non-statutory public inquiry. However judicial cases have confirmed that it is the authority's duty to determine an application in a fair and reasonable manner and recent judicial decisions have also sanctioned the practice of holding non-statutory inquiries. In R (Cheltenham Builders Ltd) v South Gloucester District Council the court decided that the holding of a non-statutory inquiry in some circumstances would be necessary as a matter of fairness. In R (on the application of Naylor) v Essex County Council (2014) the Court confirmed that a public inquiry was one means by which a registration authority may obtain evidence other than from the applicant and any objector or by which it may test or supplement that which it has received in written form.

Options Considered

25. Members of the Committee need to consider whether to:
- (i) Accept the Inspector's recommendation that the application by Winterslow Opposed to Over Development (WOOD) under Section 15(3) of the Commons Act 2006 be approved but only to the extent that Brown's Copse is registered as a town or village green in its entirety, other than the north-west corner of the Copse that is owned by Wiltshire Council
 - (ii) Accept the Inspector's recommendation, but with modification supported by the available evidence, e.g. modifying the area of land to be registered
 - (iii) Not accept the Inspector's recommendation and refuse the application to register land in the parish of Winterslow as a town or village green
 - (iv) Not accept the Inspector's recommendation and resolve to register all the claimed land as described in the application made under Section 15(1) of the Commons Act 2006 and described known as The Common / Browns Copse Field / Bluebell Wood Field / Village Hall Field / The Field, as a town or village green.
26. Where Members do not resolve to accept the Inspector's recommendation and make an alternative decision, clear reason for this decision must be given as the decision of the Registration Authority is potentially open to legal challenge by both the applicant and Landowner.

Reason for Proposal

27. In the Winterslow case, the evidence of whether a significant number of inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years, was in dispute. It is the duty of the determining authority to determine the application in a fair and reasonable manner. Due to the substantial dispute of fact in this case, Wiltshire Council determined to hold a non-statutory public inquiry where the facts of the case would be likely to be resolved by the inquiry process through witnesses giving oral evidence in chief and through cross-examination and re-examination, including consideration of documentary evidence by the Inspector.

28. Following the close of the inquiry, the Inspector presented a 123 page recommendation to Wiltshire Council, dated 10 March 2015 and which contained the following recommendation:

“For the reasons set out in Section 5 of this report, I recommend to the Registration Authority:

The Application by Winterslow Opposed to Over Development (WOOD) under Section 15(3) of the Commons Act 2006 be approved but only to the extent that Brown’s Copse is registered as a town or village green in its entirety, other than the north-west corner of the Copse that is owned by Wiltshire Council.”

29. Officers consider that the full and detailed report is a correct and accurate reflection of the documentary evidence and evidence given by witnesses at the public inquiry and that the Inspector’s recommendation should be accepted.

Proposal

30. That Wiltshire Council accept the Inspector’s recommendation and the application by Winterslow Opposed to Over Development (WOOD) under Section 15(3) of the Commons Act 2006 be approved but only to the extent that Browns Copse is registered as a town or village green in its entirety, other than the north-west corner of the Copse that is owned by Wiltshire Council.

Tracy Carter

Associate Director – Waste and Environment

Report Author:

Janice Green

Rights of Way Officer

The following unpublished documents have been relied on in the preparation of this Report:

None

Appendices:

Appendix A – Location Plan

Appendix B – Application Plan

Appendix C – Land Ownership Plan

Appendix D – Wiltshire Council Report on the Recommendation to Hold a Non-Statutory Public Inquiry (31 January 2014)

Appendix E – Inspectors Report (Mr Stephen Morgan, Landmark Chambers – 10 March 2015)